IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE TWENTY SECOND DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE G. BIKSHAPATHY

and
THE HON'BLE MR JUSTICE P.S.NARAYANA

WRIT PETITION NO : 1123 of 2005

Between:

K. Dhana Raju S/o Venkataratnam
R/o Nandikotkur, Kurnool District

..... PETITIONER

AND

1 The Director General and Inspector General of Prisons and Correctional

Services, Government of Andhra Pradesh, Chenchalguda, Hyderabad
2 The District Sub-Jail Officer, Ongole, Prakasam District
3 The State of Andhra Pradesh rep byPrincipal Secretary,

Home (Prisons) Department, Secretariat, Hyderabad-12

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to call for the records in O.A. No. 4194 of 2003 and issue an appropriate Writ, order or Direction, particularly one in the nature of Writ of Certiorari, and quash the order passed by the Andhra Pradesh Administrative Tribunal, Hyderabad in O.A. No. 4194 of 2003, dated 6-1-2005, confirming the order passed by the 1st respondent in proceedings No. EA2/1100/2000, dated 17-6-2003 and consequential proceedings issued by the 2nd respondent in proceedings No. DSJO/OGL/605/2003-47, dated 21-6-2003 as illegal arbitrary, unjust, contrary to law and violative of Articles, 14, 16 and 21 of the constitution of India and grant all consequential benefits.

Counsel for the Petitioner: MR.A.K.JAYAPRAKASH RAO

Counsel for the Respondent: GP FOR SERVICES I

The Court at the admission stage made the following:

ORAL ORDER: (Per Hon'ble Sri Justice G. Bikshapathy)

The writ petition is filed, assailing the order passed by the A.P. Administrative Tribunal, Hyderabad in O.A.No.4194 of 2003, dated 06.01.2005.

2 . The petitioner was appointed as Deputy Jailor on 01.06.1982 and he was promoted as Jailor on 08.03.1994. While so, a charge sheet was issued to him alleging that he has pilferaged 100 Kgs of rice on 25.05.1999 and misappropriated its cost. The explanation was submitted by the petitioner denying the charge. However, the authority passed an order on 21.03.2000 imposed the punishment of recovery of cost of 100 kgs of rice. In fact it is also on record that the amount was recovered from his salary. Thereafter, the petitioner filed an appeal before the Government, the Government by an order dated 20.07.2002 set aside the order of punishment and remitted the matter to the Disciplinary Authority to follow the procedure laid down in A.P. Civil Services (C.C.A.) Rules, 1991 (hereinafter referred to as Rules) and pass appropriate orders. However, it appears that the disciplinary authority issued another charge sheet on 16.10.2002 under Rule.20 of A.P.C.S. (CCA) Rules, 1991 and an enquiry was conducted and ultimately, he was found guilty and finally the disciplinary authority imposed the following punishment:

> "Sri K. Dhana Raju, Jailor is reduced to the rank of Deputy Jailor from the post of Jailor for a period of 3 years and after undergoing the penalty, the Delinquent Officer shall not be re-promoted automatically and his case shall be placed before the DPC and consequent on his re-promotion after the period of penalty he shall not regain his original seniority in the higher grade but it would be from the date of his re-promotion"

Assailing the said punishment the petitioner filed O.A. 4193 of 2003 before the Tribunal. The learned Tribunal however dismissed the said O.A. on 06.01.2005. Against the said order, the present writ petition has been filed.

3 . The learned counsel for the petitioner submits that the impugned proceedings initiated by the disciplinary authority consequent on the remand, and the order passed on 20.07.2002 is wholly without jurisdiction and hence the order of punishment is liable to be set aside. He also submits that in appeal lies before the Government against the order passed by the disciplinary authority. But, however, he

tried to submit that when the very jurisdiction of the authority to impose punishment is involved no useful purpose will be served for filing of appeal. Thus, he tried to make defence in respect of filing of appeal against the order of the disciplining authority. He also further submits that originally the punishment of recovery from the salary was imposed by the authority and the government observing that the procedural laid down under Rule 22 of A.P.C.S. (CCA) Rules, 1991 (hereinafter referred to as Rules) has not been followed, set aside the order of punishment and remitted back to the disciplinary authority to follow rules. But, however after the remand, a charge sheet was issued for major punishment, which is highly illegal and without jurisdiction. He also further submits that the findings recorded by the authority are also not sustainable inasmuch as there is no evidence available to prove the guilt of the petitioner.

4. The learned Government Pleader submits that when the matter was remitted to the disciplinary authority by the government, it is always open for it to issue fresh charge sheet and proceed in accordance with rules. Hence, the order of tribunal cannot be said to suffer from any illegality.

5. It is not in dispute that on earlier occasion the punishment imposed was a minor one and the same was also observed by the government in the earlier order dated 20.07.2002 and the Government having been set aside the same, remitted back the same for passing appropriate orders. The following is the extract of the order of the Government:

> Government have carefully examined the appeal petition of Sri K. Dhana Raju with reference to the reports furnished by the Director General & Inspector General of Prisons & CS, A.P., Hyderabad in the references second and third cited and the original connected records, and felt that the disciplinary authority have not followed the procedure laid down under rule 22 of APCS (CCA) Rules, 1991 while imposing the said punishment which comes under minor penalties under rule 9 of said Rules. Hence, it is decided to set aside the proceedings of the DG & IGI & CS, AP, Hyderabad and remit back the case to him for taking further action.

But, however, curiously the disciplinary authority issued a charge sheet on 16.10.2002 for a major punishment. In this regard, we observed that when the Government itself recorded that the rules prescribed under Rule 22 of the Rules has

not been followed. The question of magnifying the situation would not arise and that jurisdiction is not available to the disciplinary authority. What is required to be done by the disciplinary authority is to follow the procedure prescribed as contemplated under rule 22 and then pass appropriate orders. Giving a go bye to the said procedure and taking a new step by resorting to major punishment by issuing fresh charge sheet under Rule 22 of Rules is unwarranted and such a jurisdiction could not be exercised in the wake of the remand order.

6. Under those circumstances, we are of the considered opinion that the disciplinary proceedings initiated by the disciplinary authority in consequence on the order of remand are wholly illegal and without jurisdiction. But, however, the fact that the petitioner did not file any appeal before the Government as he availed on earlier occasion. But, in view of the long lapse of time, we find that it will not be appropriate to remit the matter to the disciplining authority again to cause an enquiry under Rule 22 and pass appropriate punishment orders. Instead, we direct the Government to pass appropriate orders of minor punishment under Rule 22 of the Rules as observed by them in their Memo dated 20.07.2002 two months from the date of receipt of a copy of this order. The order of punishment imposed by the disciplinary authority in the proceedings dated 17.06.2003 is stands quashed.

7. Accordingly, the writ petition is allowed as indicated above. No costs.

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(G. BIKSHAPATHY)

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(P.S. NARAYANA, J)

Date: 22.02.2005

Ksn

..... REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1 The Director General and Inspector General of Prisons and Correctional

Services, Government of Andhra Pradesh, Chenchalguda, Hyderabad
2 The District Sub-Jail Officer, Ongole, Prakasam District
3 The Principal Secretary, Government of Andhra Pradesh

Home (Prisons) Department, Secretariat, Hyderabad-12

4. Two C. Cs to G.P. for Services I, High Court Buildings, Hyderabad (OUT).

5. 2 CD copies

6. 1 CC to MR.JAYAPRAKASH RAO

7. The Registrar, A.P. Administrative Tribunal, Hyderabad.

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